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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,932

03/11/2004

Scott Arthur Muirhead

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EXAMINER

CHEN, JOSE V

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

07/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,932	<b>Applicant(s)</b> MUIRHEAD, SCOTT ARTHUR	
	<b>Examiner</b> José V. Chen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

In view of the Appeal Brief filed on 03/27/09, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Lanna Mai/

Supervisory Patent Examiner, Art Unit 3637.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3637

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Apps et al or Apps et al in view of the publications entitled “Fire and Polyvinyl Chloride” ( reference “AR” in the form 1449 mailed 09/01/06) and “The Synthesis and Characterization of New Thermoplastic Fire Resistant Materials” (reference “U” of the Pto Form-892 mailed 09/01/06), respectively. The patent to Apps et al (6,006,677) teaches structure as claimed including a pallet assembly and a fire resistant layer formed upon an exterior of the pallet assembly. It is noted here that plastics including thermoplastic material provides a fire resistant layer as claimed since thermoplastic material is inherently fire resistant, for example fire resistant compared to wood or paper. Further, the first two paragraphs of the article

Art Unit: 3637

submitted (ids filed 06-19-06 entitled "Fire and Polyvinyl Chloride" ,1996), it is stated that "Polyvinyl chloride (PVC, or vinyl) materials or products tend to have excellent fire performance properties...". Further, the article to McGrath (at least at the Abstract) suggest the same. Claim 19 states ...a fire resistant layer formed upon an exterior of said pallet assembly." The patent to Apps (thermoplastics) teaches such structure as claimed since thermoplastic materials inherently have some resistant to fire or in the alternative Apps et al in view of the publications entitled "Fire and Polyvinyl Chloride" and "The Synthesis and Characterization of New Thermoplastic Fire Resistant Materials" as stated above.

Claim 19 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gronnevik or Gronnevik in view of the publications entitled "Fire and Polyvinyl Chloride" ( reference "AR" in the form 1449 mailed 09/01/06) and "The Synthesis and Characterization of New Thermoplastic Fire Resistant Materials" (reference "U" of the Pto Form-892 mailed 09/01/06), respectively. The patent to Gronnevik teaches structure as claimed including a pallet assembly and a fire resistant layer formed upon an exterior of the pallet assembly. It is noted here that plastics including thermoplastic material provides a fire resistant layer as claimed since thermoplastic material is inherently fire resistant, for example fire resistant compared to wood or paper. Further, the first two paragraphs of the article submitted (ids filed 06-19-06 entitled "Fire and Polyvinyl Chloride" ,1996), it is stated that "Polyvinyl chloride (PVC, or vinyl) materials or products tend to have excellent fire performance properties...". Further, the article to McGrath (at least at the Abstract) suggest the same. Claim 19

Art Unit: 3637

states "...a fire resistant layer formed upon an exterior of said pallet assembly." The patent to Gronnevik(thermoplastics) teaches such structure as claimed since thermoplastic materials inherently have some resistant to fire or in the alternative Gronnevik in view of the publications entitled "Fire and Polyvinyl Chloride" and "The Synthesis and Characterization of New Thermoplastic Fire Resistant Materials" as stated above.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik. The patent to Gronnevik teaches structure substantially as claimed, as discussed above, including a pallet shell half (3), second pallet shell half (4) fused together, a support structure. The placement of a support member or the dimension of a shell are matters of desirability which would have been obvious and well within the level of ordinary skill in the art, thereby providing structure as claimed and further would have been predictable.

Claims 20, 21, 23, 24, 25, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik in view of Ford et al. The patent to Gronnevik teaches structure substantially as claimed including a fire resistant pallet, the only difference being that the pallet does not include a mixture of intumescent material. However, the patent to Ford et al teaches the use of providing intumescent compositions of plastic to provide a protective layer for a structure. It would have been obvious at the time of the invention to modify the structure of Gronnevik to include a mixture of intumescent plastic material to provide a protective layer for a structure, as taught by Ford et al since such structures are used for the same intended purpose, thereby providing structure as

Art Unit: 3637

claimed. The percentages or ratios of mixture is a matter experimentation which would have been obvious and well within the level of ordinary skill in the art and would have been predictable, thereby providing structure as claimed. It is noted that the method to which a utility structure is formed carried no weight in a utility claim.

***Allowable Subject Matter***

Claims 11-18 are allowable over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

José V. Chen

Application/Control Number: 10/798,932  
Art Unit: 3637

Page 7

Primary Examiner  
Art Unit 3637

/José V. Chen/  
Primary Examiner, Art Unit 3637